

**BOARD OF ENVIRONMENTAL PROTECTION**  
**Meeting Minutes**

June 19, 2003

A meeting of the Board of Environmental Protection was held on Thursday, June 19, 2003, at the Holiday Inn / Ground Round facility in Augusta, Maine. Richard Wardwell, Chair, called the meeting to order at 8:30 a.m. with the following individuals present:

**Board:** Katharine Littlefield, John Tewhey, Richard Wardwell, Jean T. Wilkinson, Nancy Ziegler, Irving Faunce, John Marsh, Virginia Plummer and Ernest Hilton

**Absent:** Melford Pelletier

<b><u>Staff:</u></b>	<u>Bureau of Land and Water Quality</u>	Judy Gates
	<u>Bureau of Land and Water Quality</u>	Marybeth Richardson
	<u>Bureau of Land and Water Quality</u>	LaMarr Cannon
	<u>Bureau of Land and Water Quality</u>	Dana Murch
	<u>Bureau of Land and Water Quality</u>	Dennis Merrill
	<u>Bureau of Land and Water Quality</u>	Lee Doggett
	<u>Bureau of Land and Water Quality</u>	Linda Kokemuller

**Others:** Dawn Gallagher, Commissioner  
Jan McClintock, Assistant Attorney General  
Peggy McCloskey, Assistant Attorney General (Sand Dune issue only)  
Jon Edwards, Assistant Attorney General (Aquaculture issue only)  
Cynthia S. Bertocci, Executive Analyst  
Terry Hanson, Administrative Assistant

*(Meeting adjourned at approximately 3:30 p.m.)*

**I. DEPARTMENTAL**

**A. COMMISSIONER'S COMMENTS:** Dawn Gallagher, Commissioner reported the following:

Legislative Bills:

*Climate Change:* The Climate Change bill was approved and will require DEP to develop an Action Plan by July 2004. The Action Plan will be the roadmap to achieve by 2010 a reduction in the level of greenhouse gas emissions to the levels that existed in year 1990, with a target of an additional 10% reduction by year 2020. This initiative will involve a stakeholder process and could potentially require some outside consultant work.

*E-Waste:* The bill dealing with electronic waste (e-waste) will prohibit the disposal of electronic waste in landfills. This prohibition is expected to become effective within the next couple of years and there may be a disposal fee associated with future purchases of products that become electronic wastes upon disposal (e.g. computers).

*Paint/Solvent:* The bill dealing with the disposal of paints and solvents will impose a disposal fee.

*Gulf Island Pond:* The bill dealing with dissolved oxygen (DO) levels in Gulf Island Pond will require the development of a plan to address the DO issues. The Department will consider the standards associated with the Class C waterbody with the goal of attainment of that Class C rating.

*Bond Package:* The Department's proposed 16 million dollar bond package will be reduced to 6 million dollars. Many members of the Legislature are not in favor of presenting an environmental bond package this year. This bond package could impact 90 communities through the Overboard Discharge Program and Small Community Grant Program for wastewater treatment facilities. Some of these bonds would trigger matching funds from the Federal Government.

Questions of the Commissioner

Board member Virginia Plummer requested additional information regarding the proposed Bond Package and legislative timeframes.

Board member Faunce asked if all of the \$16 million would be spent on environmental initiatives.

Yes, it would include the request of the Department of Health for their drinking water program as well as DEP's targeted programs.

- B. CHAIRMAN’S COMMENTS:** Board member Melford Pelletier sent a note with his regrets for his absence at today’s meeting.

Chairman Wardwell provided Board members with a copy of a June 17<sup>th</sup> letter from Commissioner McGowan of the Department of Conservation advising Board members of his plans to implement a stakeholder process to address conflicts between coastal development and coastal resources and identify approaches to protection of sand dune systems that might complement the regulatory approach. Possibilities might include a “buy-out” program.

Chairman Wardwell noted that this was the final Board meeting for both John Marsh and John Tewhey. He and several other Board members expressed their appreciation for their hard work and dedication to the Board over the past eight years. They will be missed. A reception will be held at the end of today’s meeting. All are welcome to attend.

- C. EXECUTIVE ANALYST COMMENTS:**

BEP handbook. Cynthia Bertocci announced that the handbook which is under final review by the Attorney General’s Office should be available soon.

- D. BOARD CALENDAR:**

Reviewed: The regular meeting scheduled for July 3, 2003 will be cancelled.

- E. DEPARTMENTAL ORDERS:** Reviewed

- F. EXECUTIVE SESSION:** None

## **II CONSENT AGENDA ITEMS**

The Board voted (9-0-0-1) to approve the agenda items 1, 2, 3, 4, and 5 as presented.

1. MSAD #53 - WARSAW MIDDLE SCHOOL and TOWN OF PITTSFIELD, Pittsfield - Administrative Consent Agreement and Enforcement Order (BRMW)
2. LYMAN-MORSE BOATBUILDING, INC., Thomaston - Administrative Consent Agreement and Enforcement Order (BRWM)
3. J & L ACQUISITIONS, INC., Winslow - Administrative Consent Agreement (BLWQ-Land)
4. PAULA ONGLEY - Waterboro – Administrative Consent Agreement (BLWQ-Land)
5. H.H.H., LLC., South Portland - Administrative Consent Agreement and Enforcement Order (BLWQ-Land)

6. DIAMOND COVE HOMEOWNERS ASSOCIATION, Portland.

The Board voted (9-0-0-1) to approve the revised draft Board order denying the appeal and affirming, with modifications, the Commissioner’s decision to grant the permit transfer.

Board members Ernest Hilton, Richard Wardwell, Katharine Littlefield, John Marsh, Irving Faunce, Virginia Plummer, Jean T. Wilkinson, John Tewhey and Nancy Ziegler voted to support the motion. Board member Melford Pelletier was absent.

7. HEMONDS MOTOCROSS PARK, LLC., Minot.

A motion to replace the reference to 24 hour period with calendar day. Failed (2-7-0-1).

Board members John Tewhey and Richard Wardwell voted to support the motion. Board members Irving Faunce, Ernest Hilton, Virginia Plummer, Jean T. Wilkinson, Nancy Ziegler, John Marsh and Katharine Littlefield voted opposed. Board member Melford Pelletier was absent.

The Board voted (7-2-0-1) to approve the revised draft Board order denying the appeal and affirming the Commissioner's decision to grant the permit.

Board members Ernest Hilton, Irving Faunce, Katharine Littlefield, Richard Wardwell, Nancy Ziegler, Virginia Plummer and John Marsh voted to support the motion. Board members John Tewhey and Jean T. Wilkinson voted opposed. Board member Melford Pelletier was absent.

### **III. Regular Agenda**

1. CHINA LAKE / WATER LEVEL (petitions to intervene)

The Board voted (9-0-0-1) to approve the First Procedural Order as presented which grants intervenor status to David Landry, James Pitney, Town of China and Kennebec Water District.

Board members Ernest Hilton, Irving Faunce, Katharine Littlefield, Richard Wardwell, John Tewhey, Jean T. Wilkinson, Virginia Plummer, Nancy Ziegler and John Marsh voted to support the motion. Board member Melford Pelletier was absent.

The vote was taken pursuant to 38 M.R.S.A. Section 840, Title 5 M.R.S.A. Chapter 375 and 06-096 CMR Chapter 30. Staff member: Cynthia S. Bertocci, Executive Analyst – BEP

2. DRAFT GENERAL PERMIT FOR ATLANTIC SALMON AQUACULTURE (proposed for adoption)

The Board voted (8-1-0-1) to approve an amendment to Part II. Section B. Feeding rates and monitoring follows:

**Part II. B. Feeding rates and monitoring.** *...determination are made available to the Department for review ~~and approval~~, these records to be compiled in accordance with Department standards.*

Board members Irving Faunce, Katharine Littlefield, John Tewhey, Virginia Plummer, Richard Wardwell, Jean T. Wilkinson, Nancy Ziegler and John Marsh voted to support the motion. Board member Ernest Hilton voted opposed. Board member Melford Pelletier was absent.

The Board voted (8-1-0-1) to approve the Draft General Permit for Atlantic Salmon Aquaculture as recommended by the Department to include the above amendment and correction of error in date in Part II.I.4.b. from July 31, 2003 to April 1, 2004.

Board members Irving Faunce, Katharine Littlefield, John Tewhey, Virginia Plummer, Richard Wardwell, Jean T. Wilkinson, Nancy Ziegler and John Marsh voted to support the motion. Board member Ernest Hilton voted opposed. Board member Melford Pelletier was absent.

The vote was taken pursuant to 38 M.R.S.A. Section 413 et. seq. and 06-096 Chapter 30.  
Staff member: Dennis Merrill, Bureau of Land and Water Quality.

3. CHAPTER 355, COASTAL SAND DUNE RULES / AMENDMENTS (provisional adoption)

A motion to amend section 3 H. Building's value to eliminate language regarding appraised market value. Failed (2-6-1-1).

Board members Ernest Hilton and Virginia Plummer voted to support the motion to amend. Board members John Tewhey, Irving Faunce, Katharine Littlefield, Richard Wardwell, Jean T. Wilkinson and Nancy Ziegler voted opposed. Board member John Marsh (abstained?)( When you just don't vote on a matter or issue, it is better to say he abstained. If a person decides not to participate in a whole matter, perhaps due to a conflict of interest, you should say he recused himself.). Board member Melford Pelletier was absent.

The Board voted (5-3-1-1) to provisionally adopt Chapter 355, Coastal Sand Dune Rules as recommended by the Department with the following amendments:

3.V. *Frontal dune. ...most seaward ridge of sand **and gravel and** includes former frontal...*

3W. *Lot. **Also referred to as a lot of record, All** contiguous areas under a single present ownership **as indicated by a deed and recorded in the registry of deeds** constituting a piece...*

6.B(5)(d) *...regulation that would allow **an alternative to** the project to proceed in compliance with the standards in Section ~~75~~ have...*

8..(1)(a) *... denial of a permit under this chapter would constitute **an unconstitutional** taking of property **after an appeal, if any**;*

8.A(1)(b)(ii) *The property cannot be put to a **practical reasonable** economic use...*

Board members John Tewhey, Richard Wardwell, Virginia Plummer, Jean T. Wilkinson and Nancy Ziegler voted to support the motion. Board members Ernest Hilton, Irving Faunce and Katharine Littlefield voted opposed. Board member John Marsh voted to recuse. Board member Melford Pelletier was absent.

The vote was taken pursuant to 38 M.R.S.A. Section 341-D, Section 480-A. Staff member: Linda Kokemuller, Bureau of Land and Water Quality

4. WIDEWATER STILLWATER COMPANY, LLC (petition for BEP reconsideration)

The Board voted (7-0-1-2) to deny the request to reconsider the application of Widewaters Stillwater Company for a retail development project in Bangor.

Board members Ernest Hilton, Katharine Littlefield, John Tewhey, Virginia Plummer, Richard Wardwell, Nancy Ziegler and John Marsh voted to support the motion. Board member Irving Faunce recused himself. Board members Jean T. Wilkinson and Melford Pelletier were absent.

The vote was taken pursuant to 38 M.R.S.A., Section 341-D, 346(1), Title 5 M.R.S.A. Section 11000 et. seq. and 06-096 CMR Chapter 2. Staff member: Cynthia S. Bertocci, Executive Analyst, BEP